

EXHIBIT 603.28

PLAINTIFFS' EXHIBITS 010609

SANTA CRUZ COUNTY
BOARD OF SUPERVISORS INDEX SHEET

Creation Date: 6/17/08

Source Code: SHERF

Agenda Date: 6/24/08

INVENUM: 61169

Resolution(s):

Ordinance(s):

Contract(s): 83690

Continue Date(s):

Index: --Letter of Sheriff-Coroner, dated April 8, 2008

--ADM-29, Request for Approval of Agreement, Contract No. 83690

--Independent Contractor Agreement with Richard T. Mason, M.D.

Item: 26. APPROVED forensic pathology services contract with Dr. Richard Mason in the amount of \$185,001 for the period of July 1, 2008 through June 30, 2009, as recommended by the Sheriff-Coroner





0283

County of Santa Cruz

Sheriff-Coroner

701 Ocean Street, Suite 340, Santa Cruz, CA 95060
(831) 454-2440 FAX: (831) 454-2353

Steve Robbins
Sheriff-Coroner

APPROVED AND FILED
BOARD OF SUPERVISORS

DATE: *24/08*
COUNTY OF SANTA CRUZ
SUSAN A. MAURILLO
EX-OFFICIO CLERK OF THE BOARD: June 24, 2008

April 8, 2008

Board of Supervisors **BY** *Susan A. Maurillo* **DEPT:**
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060.

RE: Forensic Pathology contract with Dr. Mason

Dear Members of the Board:

As your Board is aware, the Sheriff's Office has been contracting with Dr. Mason for forensic pathology services since July 1, 1980. Dr. Mason's contract provides for 210 autopsies per year to determine a cause of death and other advisory services. This letter is to provide your Board with background information and request that you approve a continuing contract with Dr. Mason.

Forensic Pathology is a highly specialized field of medicine. To determine the cause of death, the autopsy process requires the autopsy itself, and an extensive review of any available medical records. It may also require the collection of tissue and other biological samples, the preparation and interpretation of slides for microscopic examination, and the preparation of detailed reports. Dr. Mason is nationally and internationally recognized for his expertise, particularly in the area of gunshot wounds and firearm ballistics, blunt and sharp instrument trauma and bio-mechanics.

In performance of these **duties**, Dr. Mason is available to local law enforcement and the District Attorney's Office 24-hours per day, 7 days per week. He often responds to the actual scene of homicides or suspicious deaths, and his presence and direction at a crime scene has proven to be very helpful to Crime Scene Investigators as they reconstruct and evaluate a death. The Sheriff's forensic pathologist is also available for court testimony in homicide or serious injury cases.

Dr. Mason is a contract employee with no retirement benefits or medical insurance. His salary alone is roughly 20% less than other county doctors. We are requesting an

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increase of approximately 13 percent. This increase would keep our pathologist's salary competitive with other counties.

Funding for this contract increase has been included as part of the proposed 2008/09 budget.

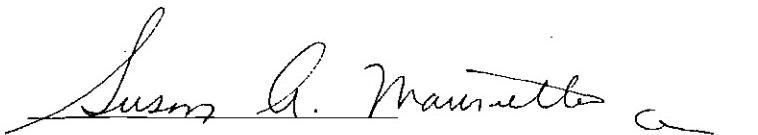
IT IS THEREFORE RECOMMENDED that your Board approve the contract with Dr. Richard Mason for \$185,001 for the period of July 1, 2008 through June 30, 2009.

Very truly yours,



Steve Robbins
Sheriff-Coroner

RECOMMENDED:



Susan A. Mauriello
County Administrative Officer

cc: Sheriff-Coroner, Attn: Susan
CAO
Auditor-Controller

0285

COUNTY OF SANTA CRUZ
REQUEST FOR APPROVAL OF AGREEMENT

TO: Board of Supervisors
 County Administrative Office
 Auditor-Controller

FROM: SHERIFF-CORONER (Department)

BY: S. Robbins (Signature) 5-19-08 (Date)

Signature certifies that appropriations/revenues are available

AGREEMENT TYPE (Check One)

Expenditure Agreement Revenue Agreement

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of same.

1. Said agreement is between the Santa Cruz County Sheriff-Coroner (Department/Agency)
 and Richard T. Mason, M.D., 1319 Glen Eyrie Ave., San Jose, CA 95125 (Name/Address)
2. The agreement will provide forensic pathological services for Sheriffs Office investigations.

3. Period of the agreement is from 07/01/08 to 06/30/09

4. Anticipated Cost is \$ 185,001.00 Fixed Monthly Rate Annual Rate Not to Exceed

Remarks: New ICA replaces existing ICA dated June 24, 1994. Placed on CALFA 08/09

5. Detail: On Continuing Agreements List for FY 08 - 09. Page CC- _____ Contract No: CTB 3690 OR 1st Time Agreement
- Section II No Board letter required, will be listed under Item 8
- Section III Board letter required
- Section IV Revenue Agreement

6. Appropriations/Revenues are available and are budgeted in 661400 (Index) 3665 (Sub object)

NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACH COMPLETED AUD-74 OR AUD-60

Appropriations are available and will be encumbered. Contract No: CTB 3690
are not have been By: K. Wright Date: 6/10/08
 Auditor-Controller Deputy

Proposal and accounting detail reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize

(Dept/Agency Head) to execute on behalf of the _____

(Department/Agency)

Date: 6/14/08

By: C. H. Smith
 County Administrative Office

Distribution:

Board of Supervisors - White
 Auditor-Controller - Canary
 Auditor-Controller - Pink
 Department - Gold

State of California
 County of Santa Cruz
 I, Jean A. Manresa, ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz
 State of California, do hereby certify that the foregoing request for approval of agreement was approved by said Board of Supervisors as recommended by the County Administrative Office by an order duly entered in the minutes of said Board on 6/14/08 2008

ADM - 29 (8/01) (SHF 12/07)
 Title I, Section 300 Proc Man

By: Deputy Clerk

AUDITOR-CONTROLLER USE ONLY

CO	Document No.	\$	JE Amount	Lines	H/TL	Keyed By
TC110	Auditor Description	\$	Amount	Index	/	Sub object

Date: 26
 User Code

0286

Contract No. 83690

INDEPENDENT CONTRACTOR AGREEMENT

This Contract is entered into this 1st day of July, 2008, by and between, the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and RICHARD T. MASON, M.D., hereinafter called CONTRACTOR. The parties agree as follows:

1. DUTIES.

CONTRACTOR agrees to exercise special skill to accomplish the following results contained in Exhibit #A for the County of Santa Cruz Sheriff-Coroner's Office.

2. COMPENSATION.

In consideration for CONTRACTOR accomplishing said result, COUNTY agrees to pay CONTRACTOR, according to the following schedule, for up to the established limit of 210 autopsies and 75 physical inspections each fiscal year, processed for payment in full, as follows:

July 1,2008 – June 30,2009 - \$15,416.75 per month - \$185,001 per year
July 1,2009 – June 30,2010 - \$16,958.25 per month - \$203,499 per year
July 1,2010 – June 30,2011 - \$18,654 per month - \$223,848 per year

All cases performed beyond the established limit, listed above, will be paid on a case by case basis, as follows:

Autopsies
Autopsy - \$682.50/case
Homicide - \$1,260/case
Sudden Infant Death Syndrome (SIDS) - \$1,260/case
Physical Inspections - \$420 /case

3. TERM.

The term of this Contract shall be: July 1,2008 through June 30, 2011.

4. EARLY TERMINATION.

Either party hereto may terminate this Contract at any time by giving thirty (30) days written notice to the other party.

5. INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.

CONTRACTOR shall indemnify and hold harmless the COUNTY for any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Contract (including, without limitation, unemployment insurance, social security and payroll tax withholding).

6. INSURANCE.

CONTRACTOR, at its sole cost and expense, for the full term of this Contract (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be considered in excess of CONTRACTOR'S insurance coverage and shall not contribute to it. If CONTRACTOR normally carries insurance in an amount greater than the minimum amount required by the COUNTY for this Contract, that greater amount shall become the minimum required amount of insurance for purposes of this Contract. Therefore, CONTRACTOR hereby acknowledges and agrees that any and all insurances

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EB4/08

carried by it shall be deemed liability coverage for any and all actions it performs in connection with this Contract.

If CONTRACTOR utilizes one or more subcontractors in the performance of this Contract, CONTRACTOR shall obtain and maintain Independent Contractor's Insurance as to each subcontractor or otherwise provide evidence of insurance coverage from each subcontractor equivalent to that required of CONTRACTOR in this contract, unless CONTRACTOR and COUNTY both initial here _____/_____.

A. Types of Insurance and Minimum Limits

(1) Professional Liability Insurance in the minimum amount of \$1,000,000 combined single limit.

B. Other Insurance Provisions

(1) If any insurance coverage required in this Contract is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees to maintain the required coverage for a period of three (3) years after the expiration of this Contract (hereinafter "post Contract coverage") and any extensions thereof. CONTRACTOR may maintain the required post Contract coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post Contract coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Contract. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Contract in order to purchase prior acts or tail coverage for post Contract coverage shall be deemed to be reasonable.

(2) CONTRACTOR agrees that it will not voluntarily cancel any insurance relevant to this Contract without first giving COUNTY 30 days advance notice, in writing. CONTRACTOR agrees that if insurance relevant to this Contract is involuntarily cancelled or lapses in any respect, CONTRACTOR will notify COUNTY immediately.

(3) CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Contract with Certificates of Insurance for all required coverages. All Certificates of Insurance shall be delivered or sent to:

Santa Cruz County
Sheriff-Coroner
Attn: Fiscal Unit
701 Ocean Street, Room 340
Santa Cruz, CA 95060

7. EQUAL EMPLOYMENT OPPORTUNITY.

During and in relation to the performance of this Contract, CONTRACTOR agrees as follows:

A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Contract provides compensation in excess of \$50,000 to CONTRACTOR and if CONTRACTOR employs fifteen (15) or more employees, the following requirements shall apply:

(1) The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination, rates of pay or other forms of compensation, selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. In addition, the CONTRACTOR shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in CONTRACTOR'S solicitation of goods and services. Definitions for Minority/Women/Disabled Business Enterprises are available from the COUNTY General Services Purchasing Division.

(2) In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this Contract or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further contracts with the COUNTY.

(3) The CONTRACTOR shall cause the foregoing provisions of subparagraphs 7B(1) and 7B(2) to be inserted in all subcontracts for any work covered under this Contract by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

8. INDEPENDENT CONTRACTOR STATUS.

CONTRACTOR and COUNTY have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COUNTY. CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONTRACTOR rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors that indicate that CONTRACTOR is an independent contractor.

By their signatures on this Contract, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Contract is in fact an independent contractor.

9. NONASSIGNMENT.

CONTRACTOR shall not assign the Contract without the prior written consent of the COUNTY.

10. ACKNOWLEDGMENT.

CONTRACTOR shall acknowledge in all reports and literature that the Santa Cruz County Board of Supervisors has provided funding to the CONTRACTOR.

11. RETENTION AND AUDIT OF RECORDS.

CONTRACTOR shall retain records pertinent to this Contract for a period of not less than five (5) years after final payment under this Contract or until a final audit report is accepted by COUNTY, whichever occurs first. CONTRACTOR hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller, the Auditor General of the State of California, or the designee of either for a period of five (5) years after final payment under this Contract.

12. PRESENTATION OF CLAIMS.

Presentation and processing of any or all claims arising out of or related to this Contract shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

13. ATTACHMENTS.

This Contract includes the following attachments:

Exhibit #A - DUTIES

14. LIVING WAGE.

This Contract is covered under Living Wage provisions if this section is initialed by COUNTY _____

If Item # 14 above is initialed by the COUNTY, then this Contract is subject to the provisions of Santa Cruz County Code Chapter 2.122, which requires payment of a living wage to covered employees. Non-compliance during the term of the Contract with these Living Wage provisions will be considered a material breach, and may result in termination of the Contract and/or pursuit of other legal or administrative remedies.

CONTRACTOR agrees to comply with Santa Cruz County Code section 2.122.140, if applicable.

15. MISCELLANEOUS.

This written Contract, along with any attachments, is the full and complete integration of the parties' agreement forming the basis for this Contract. The parties agree that this written Contract supersedes any previous written or oral agreements between the parties, and any modifications to this Contract must be made in a written document signed by all parties. Any arbitration, mediation, or litigation arising out of this Contract shall occur only in the County of Santa Cruz, notwithstanding the fact that one of the contracting parties may reside outside of the County of Santa Cruz.

0290

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

1. RICHARD T. MASON, M.D.

By:

SIGNED

PRINTED



3. COUNTY OF SANTA CRUZ

By:

SIGNED

PRINTED




Address: 1319 Glen Eyrie Avenue
San Jose, CA 95125
408-298-7142

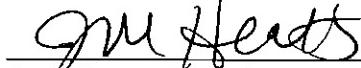
2. APPROVED AS TO INSURANCE:



Risk Management

5/15/08

4. APPROVED AS TO FORM:



Asst. County Counsel

5/15/08

DISTRIBUTION:

- Sheriff-Coroner
- Auditor-Controller
- Risk Management
- Contractor

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Exhibit #A

0291

Independent Contractor Agreement
Richard T. Mason M.D.
July 1,2008 – June 30,2011

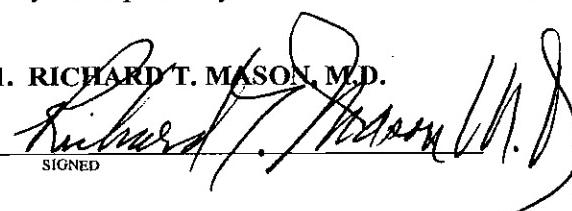
DUTIES:

Contractor agrees to exercise special skill to accomplish the following results:

- a. CONTRACTOR shall, as directed by the Santa Cruz County Sheriff-Coroner, perform pathological studies. Such studies shall include autopsies, physical inspections and all relative practices including preparing of reports, retention of records and testifying in court proceedings for all matters under the jurisdiction of the Santa Cruz County Sheriff-Coroner.
- b. CONTRACTOR shall perform and prepare reports for up to a maximum of 210 autopsies and 75 physical inspections each fiscal year. Additional services to be performed beyond the contracted maximum provided for under this agreement shall be paid on a case by case basis according to the schedule pursuant to paragraph 2 of this agreement.
- c. All costs associated with histological laboratory testing for pathological studies and all costs associated with report transcription services will be borne by the COUNTY.
- d. CONTRACTOR shall not be prohibited from performing additional forensic pathological studies for jurisdictions or parties other than the Santa Cruz County Sheriff-Coroner but shall be required to provide first priority service to the Sheriff-Coroner as needed. In the event of potential conflict of interest regarding CONTRACTOR'S services, CONTRACTOR agrees to provide service to the Santa Cruz County Sheriff-Coroner as needed prior to performing any additional services for any other client and will not enter into any agreement with outside jurisdictions that will abridge or amend this agreement.
- e. CONTRACTOR shall on or before September 30, 2008, complete each case which was incomplete or unfinished as of July 1, 2008. For cases assigned to CONTRACTOR after July 1, 2008, CONTRACTOR shall complete each case within one-hundred twenty (120) days of the date of assignment. In the event of early termination of this agreement pursuant to paragraph 4 of this agreement, CONTRACTOR shall within ninety (90) days of the date of termination complete all cases assigned to the CONTRACTOR as of the date of termination. A case is finished and complete when the pathological examinations have been conducted and a written report of autopsy and other histological findings has been prepared and submitted to the Sheriff-Coroner. In the event the CONTRACTOR fails to complete a case within the timetable set forth in this subsection, CONTRACTOR will be assessed a fee of \$120 for each case not completed within the timetable set forth in this subsection.
- f. CONTRACTOR shall submit a monthly claim for services with such supporting data as may be required by the COUNTY'S Auditor Controller.

1. RICHARD T. MASON, M.D.

SIGNED



2. COUNTY OF SANTA CRUZ

SIGNED